



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 200, 207, and 232

**[Docket No. FR-5465-F-03]
RIN-2502-AJ05**

**Federal Housing Administration (FHA): Section 232 Healthcare Facility Insurance
Program-Strengthening Accountability and Regulatory Revisions Update
Final Rule Amendment – Revision of Date of Applicability**

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule amendment.

SUMMARY: On September 7, 2012, HUD published a final rule that revised the regulations governing the insurance of healthcare facilities under section 232 of the National Housing Act (Section 232). HUD's Section 232 program insures mortgage loans to facilitate the construction, substantial rehabilitation, purchase, and refinancing of nursing homes, intermediate care facilities, board and care homes, and assisted-living facilities. The amendments made by the September 7, 2012, final rule updated the Section 232 regulations to reflect current policy and practices, improve accountability and strengthen risk management in the program. The final rule provided an applicability date of April 9, 2013, for certain of the updated requirements. This final rule amendment changes the applicability date to July 12, 2013, for the purpose of allowing more time to transition to the new requirements.

DATES: *Effective date:* [**Insert date 30 days from the date of publication in the Federal Register**].

FOR FURTHER INFORMATION CONTACT: Kelly Haines, Director, Office of Residential Care Facilities, Office of Healthcare Programs, Office of Housing, Department of Housing and

Urban Development, 451 7th Street, SW, Room 6264, Washington, DC 20410-8000; telephone number 202-708-0599 (this is not a toll-free number). Persons with hearing- or speech- impairments may access this number through TTY by calling the toll-free Federal Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On September 7, 2012, at 77 FR 55120, HUD published in the Federal Register a final rule that revised its Section 232 program regulations to bring the regulations up-to-date to reflect current policy and practices in healthcare facility transactions and to strengthen risk management and improve accountability in the program. The September 7, 2012, final rule followed a proposed rule published in the Federal Register on May 3, 2012, at 77 FR 26218, in which HUD submitted its proposed revisions for public comment. The final rule took effect on October 9, 2012. However, to allow time to transition to the updated requirements, the final rule established an applicability date of April 9, 2013 for certain of the requirements.

On May 3, 2012, at 77 FR 26304, HUD also published a notice that proposed revisions to documents used in the insurance of healthcare facilities, and solicited public comment for a period of 60 days. This notice was issued in accordance with the Paperwork Reduction Act of 1995, and was followed by a second notice, published on November 21, 2012, at 77 FR 69870, that solicited public comment for a period of 30 days. The Office of Management and Budget approved the Section 232 documents under the Paperwork Reduction Act in March 2013, and the approval was announced by notice published in the Federal Register on March 14, 2013, at 78 FR 16279.

Following issuance of the March 14, 2013, notice, lenders and other parties that would be

involved in upcoming Section 232 program transactions stated that the delayed approval presented barriers to full compliance with some of the requirements in the revised Section 232 regulations that would become applicable on April 9, 2013. The affected parties involved in upcoming financing or refinancing of a loan to be insured under Section 232 advised that they have already expended substantial time and expense in preparing the transaction based on reasonable reliance on the previously applicable Section 232 documents.

II. This Final Rule

Given that the delayed approval of the Section 232 documents has caused difficulties for parties involved in upcoming Section 232 healthcare facility transactions to comply with the updated requirements in the Section 232 regulations because of the April 9, 2013, applicability date, this final rule changes the applicability date to July 12, 2013. An additional delayed applicability date of over 90 days following publication of this final rule should allow parties involved in Section 232 healthcare facility transactions to prepare for such transactions based on the new Section 232 regulations and related Section 232 documents.

III. Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with HUD's regulations on rulemaking at 24 CFR part 10. Part 10, however, provides in §10.1 for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is “impracticable, unnecessary or contrary to the public interest.”

HUD finds that good cause exists to publish this rule for effect without first soliciting public comment because prior public comment would be contrary to the public interest. HUD's Section 232 program plays an important role in today's economy as the need for residential care

facilities has increased and requests to FHA to provide mortgage insurance for such facilities also increased. By reducing the cost of capital needed by residential care facilities to finance the construction, renovation, acquisition, or refinancing of facilities, the Section 232 program helps to improve access to quality healthcare and decrease overall healthcare costs.

Affected parties involved in upcoming Section 232 transactions have advised that efforts to comply with the April 9, 2013, applicability date would result in a delay in completion of a Section 232 transaction and considerable increased expense due to delay. Given the need for quality and affordable care in many communities across the country, HUD recognizes that a delay in completion of a Section 232 transaction whether for acquisition or refinancing for a healthcare facility not only affects the parties involved in the transaction but the community in which the healthcare facility would be purchased, constructed, or refinanced. For this reason, HUD extends the applicability date in the September 7, 2012, final rule from April 9, 2013, to July 12, 2013.

IV. Findings and Certifications

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. HUD's rulemaking for the Section 232 program, which commenced with a May 3, 2012, proposed rule and concluded with a September 7, 2012, final rule did not result in a significant economic impact on a substantial number of small entities, and the lack of such impact was addressed in the two prior published

rules. Because this rule is issued as a final rule amendment, without prior public comment, the Regulatory Flexibility Act is not applicable.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) at issuance of the May 3, 2012, proposed rule. That finding remains applicable to this final rule amendment, and is available for public inspection as provided in the September 7, 2012, final rule.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C.1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

List of Subjects in 24 CFR Part 232

Fire prevention, Health facilities, Loan programs-health, Loan programs-housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

Accordingly, part 232 of title 24 of the Code of Federal Regulations is amended as follows:

PART 232 – MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, BOARD AND CARE HOMES, AND ASSISTED LIVING FACILITIES

1. The authority citation for 24 CFR part 232 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715w; 42 U.S.C. 3535(d).

§ 232.1 [Amended].

2. In § 232.1, amend paragraph (b) by removing “April 9, 2013” and adding in its place “July 12, 2013”.

Date: April 24, 2013

Carol J. Galante
Assistant Secretary for Housing –
Federal Housing Commissioner

[FR-5465-F-03]

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